SUPREME COURT, U.S.
Supreme Court, U.S.
FILED
NOV 29 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-675

JOAN T. NORMAND,
Defendant-Petitioner,

versus

STATE OF LOUISIANA,
Plaintiff-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

CAMILLE F. GRAVEL, JR.
JAMES MICHAEL SMALL
GRAVEL, ROY & BURNES
P. O. Box 1792
711 Washington Street
Alexandria, Louisiana
Attorneys for
Defendant-Petitioner

INDEX

Page

OPINIONS BELOW 2

JURISDICTION 2

THE QUESTIONS PRESENTED 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 13

CERTIFICATE 14

APPENDIX A

Grand Jury Indictment 1a

APPENDIX B

Motion to Amend the Bill of Indictment and Order 3a

APPENDIX C

Court minutes reflecting verdict of the Ninth Judicial District Court and imposition of sentence 6a

APPENDIX D

Louisiana Supreme Court opinion 8a

APPENDIX E

Order Denying Rehearing 25a

APPENDIX F

Motion to Quash Grand Jury Indictment and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure 26a

INDEX (Continued)

Page

APPENDIX G
Stipulation entered into between District Attorney and Counsel for Defendant 32a

APPENDIX H
Minutes of Ninth Judicial District Court reflecting ruling on the Motion to Quash 35a

APPENDIX I
Bill of Exceptions Number 1 ..... 36a

TABLE OF AUTHORITIES

CONSTITUTIONS

Fourteenth Amendment to the United States Constitution 3,4,5,9,13

Article VII, Section 41, Louisiana Constitution 3,4,5,6,7,13

LOUISIANA STATUTES

Louisiana Code of Criminal Procedure, Article 402 3,4,5,6,7,12,13

CASES

Alexander v. Louisiana, 92 S. Ct. 1221 (1972)....9,12,13

Ballard v. United States, 329 U.S. 187, 67 S. Ct. 261 (1946) 10,11

Brown v. Allen, 344 U.S. 443, 73 S. Ct. 397, 416 (1953) 9

Fay v. New York, 332 U.S. 261, 300, 67 S. Ct. 1613, 1634 (1947) 11

TABLE OF AUTHORITIES (Continued)

Page

Frontiero v. Richardson, 1973, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583 8

Harmon v. Forssenius, 380 U.S. 528, 85 S. Ct. 1177 (1965) 12

Healy, et al v. Edwards, et al, 363 F. Supp. 1110 (1973), number 73-759, U.S. S. Ct. 7,8

Hernandez v. State of Texas, 347 U.S. 475, 478, 74 S.Ct. 667, 670 (1954) 9

Hoyt v. State of Florida, 368 U.S. 57, 82 S.Ct. 159 (1961) 8,9,11,12

Muller v. Oregon, 208 U.S. 412, 28 S. Ct. 324 (1908) 12

Reed v. Reed, 1971, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 8

Smith v. Texas, 311 U.S. 138, 130, 61 S. Ct. 164, 165 (1940) 10

Strauder v. State of West Virginia, 100 U.S. 303, 308, 25 L. Ed. 664, 666 (1880) 9

Thiel v. Southern Pacific Company, 328 U.S. 217, 66 S. Ct. 984 (1946) 9

White v. Crook, 251 F. Supp. 401, (M.D. Ala., 1966) 12

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No.

JOAN T. NORMAND,
Defendant-Petitioner,

versus

STATE OF LOUISIANA,
Plaintiff-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

JOAN T. NORMAND, your petitioner, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Louisiana which affirmed the conviction of your petitioner of the offense of second degree murder from the Ninth Judicial District Court, Rapides Parish, Louisiana.

OPINIONS BELOW

Ninth Judicial District Court
Rapides Parish, Louisiana

Attached to this petition are certified copies of the Grand Jury Indictment and the amended Bill of Indictment charging petitioner with second degree murder. (See Appendix A and B.) Also attached to and made part of this petition is a certified copy of the Ninth Judicial District Court minutes reflecting the jury verdict of guilty as charged (second degree murder) and the judgment imposing sentence in the case of *State of Louisiana v. Joan T. Normand.* (See Appendix C.)

Supreme Court of Louisiana

The opinion of the Louisiana Supreme Court bears the following style and caption: *State v. Normand,* La. 298 So. 2d 823. A copy of the opinion is attached to this petition and made part hereof. (See Appendix D.)

JURISDICTION

The decision of the Louisiana Supreme Court affirming mover's second degree murder conviction was entered on July 1, 1974. Mover made a timely application for a rehearing which was denied by the Louisiana Supreme Court on August 30, 1974. (See Appendix D & E.) Mover's petition for writ of certiorari is due on or before November 29, 1974. [See U.S. Supreme Court Rules 22(1) and 34].

The jurisdiction of this Court is invoked under the provisions of 28 U.S. Code Section 1257(3).

THE QUESTIONS PRESENTED

1. Whether petitioner, a female, was denied rights guaranteed her under the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution by the exclusion of women from the General Jury Venire, Grand Jury Venire, Grand Jury and Petit Jury pursuant to Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure, Article 402.

2. Whether Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402, exempting women from jury service, are violative of mover's rights under the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution, and unconstitutional on their face.

3. Whether Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402, exempting women from jury service, are unconstitutional as applied to mover in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment, Section 1, United States Constitution:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

West's Louisiana Constitution, Article VII, Section 41:

"The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict."

Louisiana Code of Criminal Procedure, Article 402:

"A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service."

STATEMENT OF THE CASE

Mover, a female, was indicted by the Rapides Parish Grand Jury, with the offense of second degree murder in connection with the shooting death of her "common-law" husband, Robert I. Jennings. The incident which resulted in the criminal charge occurred in Alexandria, Louisiana, on July 9, 1973. Defendant was found guilty as charged and filed an Appeal to the Louisiana Supreme Court. That Court affirmed mover's conviction on July 1, 1974, and denied her application for rehearing on August 30, 1974.

The issues presented in this petition were first raised in the trial court by mover's pre-trial Motion to Quash the Grand Jury Indictment and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure. A certified copy of that Motion is attached to and made part of this petition. (See Appendix F)

Mover's Motion to Quash urged that she had been denied rights guaranteed her under the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution by application of Louisiana Constitution Article VII, Section 41, and Louisiana Code of Criminal Procedure Article 402 which excluded women from jury service at the accusatory (Grand Jury) and the trial (Petit Jury) levels. Mover also specifically urged in her Motion to Quash that Louisiana Constitution Article VII, Section 41, and Louisiana Code of Criminal Procedure Article 402 were unconstitutional on their face and additionally were unconstitutional as applied to Mover.

A Stipulation between Mover and the District Attorney regarding the Rapides Parish General Venire, Petit Jury Venire, Grand Jury Venire and Grand Jury, was entered into and filed in connection with the Motion to Quash. A certified copy of that stipulation is attached to and made part of this petition. (See Appendix G) The stipulation established that the Rapides Parish general venire list from which the Grand Jury venire, Grand Jury, Petit Jury venire, and Petit Jury were drawn and selected included the names of five women and four hundred ninety five men. The Petit Jury venire contained the names of two women. The twelve member Petit Jury that convicted mover did not include any women. (See Appendix G)

It was further stipulated that the disproportionate number of women appearing on the Rapides Parish general venire and Petit Jury venire and the complete absence of women from the Grand Jury venire, Grand Jury, and Petit Jury resulted from the adherence by the Rapides Parish Jury Commission to Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure. (See Appendix G)

A hearing was held on mover's Motion to Quash and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure, on October 1, 1973, at Alexandria, Rapides Parish, Louisiana, before the Honorable Martin L. Laird, III, at which time the trial judge denied the Motion to Quash. Attached to and made part of this petition is a certified copy of the Ninth Judicial District Court minutes reflecting the trial judge's denial of mover's Motion. (See Appendix H.)

A Bill of Exceptions was reserved to the trial judge's ruling denying mover's motion and was timely presented to the trial judge subsequent to mover's conviction. A certified copy of the Bill of Exceptions is attached to and made part of this petition. (See Appendix I.) The issue raised in the Bill of Exceptions was properly presented to, and considered by, the Louisiana Supreme Court on appeal as evidenced by its written opinion. (See Appendix D — discussion of bill of exceptions number 1.)

REASONS FOR GRANTING THE WRIT

The issues presented in this petition were recently passed on by a three judge Federal Court in the Eastern District of Louisiana in *Healy, et al v. Edwards, et al,* 363 F. Supp. 1110 (1973), number 73-759 on the docket of this Court. In *Healy,* a declaratory judgment suit, plaintiffs sought a declaration that Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402 were unconstitutional. In granting plaintiff's relief, the Court stated:

> "Because the Louisiana Constitution denies all litigants Due Process of Law and deprives female litigants of their right to Equal Protection by according an exemption from jury service to women on a basis different from that available to men under substantially similar circumstances, and on the basis of a sexual criterion that is wholly unrelated to the objectives of jury service, we declare it and the statutes enacted pursuant to it unconstitutional. . . ." *Supra* at 1117.

Noting that its opinion was at odds with this Court's opinion in *Hoyt v. State of Florida*, 369 U.S. 57, 82 S.Ct. 159 (1961), the Court in *Healy* noted:

> "Nor must this Court await the day when the Supreme Court itself has occasion to reconsider and overrule *Hoyt*."
>
> 'This Court, of course, must follow the Supreme Court, but there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate Court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case.' *Rowe v. Peyton*, 4th Circuit 1967, 383 F.2d 709, 714, affirmed 391 U.S. 54, 88 S.Ct. 1549, 2 L.Ed.2d 420.

The *Healy* decision, (albiet a District Court opinion) poignantly demonstrates the need for clarification by this Court of the important federal questions presented in this petition.

Reed v. Reed, 1971, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225, and *Frontiero* v. *Richardson*, 1973, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583, relied on in *Healy.*, appear clearly to signal a departure by this court from the holding in *Hoyt*. (Hoyt's rationale will be discussed later in this petition). A majority of the Louisiana Supreme Court has refused to depart from *Hoyt* until this Court speaks again on the issue. The Louisiana Supreme Court's allegiance to *Hoyt* appears to be in conflict with *Reed* and *Frontiero*.

It is respectfully submitted that this Court should make the departure from *Hoyt* complete and unequivocal for reasons hereinafter assigned.

This Court has often condemned a State's systematic exclusion from jury service of a class of qualified citizens solely because of their race or color. A conviction of a Negro cannot stand under the Equal Protection Clause of the Fourteenth Amendment if based on indictment of a Grand Jury from which Negroes were excluded because of their race. *Alexander v. Louisiana*, 92 S. Ct. 1221 (1972). As early as 1880, it was recognized by this Court that exclusion of a class of persons from jury service on grounds other than race or color may deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws. *Strauder v. State of West Virginia*, 100 U.S. 303, 308, 25 L. Ed. 664, 666 (1880). Thus, the Fourteenth Amendment stretches beyond arbitrary racial exclusions from jury service and reaches any law, as written or applied, which singles out a distinct class for different treatment not based on some reasonable classification. *Hernandez v. State of Texas*, 347 U.S. 475, 478, 74 S. Ct. 667, 670 (1954).

In *Thiel v. Southern Pacific Company*, 328 U.S. 217, 66 S. Ct. 984 (1946), this Court, in striking down the intentional exclusion of wage earners from jury service, asserted that a properly drawn jury is one selected from a group which represents a cross section of the community. The Court emphasized that while not every recognizable class or group in a community must be represented on a given jury, there is no justification for intentionally excluding a particular class of potential jurors. See also *Brown v. Allen*, 344 U.S. 443, 73 S. Ct. 397, 416 (1953);

Smith v. Texas, 311 U.S. 138, 140, 61 S.Ct. 164, 165 (1940). *Ballard v. United States*, 329 U.S. 187, 67 S. Ct. 261 (1946), specifically held that the systematic exclusion of women from juries deprived a female defendant of the right to the representative jury guaranteed her by Congress.

A law which has the practical effect of excluding approximately one-half (1/2) of the available population from jury service denies to a defendant (particularly, a defendant who is a member of the excluded class) a jury which passes constitutional muster.

In *Ballard v. United States, supra*, the majority opinion addressed itself to the question of whether men alone truly represent a cross section of the community:

> "It is said, however, that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men — personality, background, economic status — and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle

interplay of influence one on the other is among the imponderables.

To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded." *Id.*, 329 U.S. at 193, 67 S. Ct. at 264.

It may be impossible to measure precisely how the subtle prejudice resulting from consistent exclusion of women from juries tilts the trembling scales of justice weighing the guilt or innocence of a criminal defendant. But that is no justification for failing to vindicate the constitutional right to a representative jury. *Fay v. New York*, 332 U.S. 261, 300, 67 S. Ct. 1613, 1634 (1947). This is especially true where the female point of view is excluded from a jury considering the case of a female defendant accused of murdering a male victim.

In *Hoyt v. State of Florida*, 368 U.S. 57, 82 S. Ct. 159 (1961), this Court examined a Florida statute requiring women to register for jury service and conceded that there must be no arbitrary and systematic exclusion. The Court asserted that the defendant's appeal turned on the narrow issue of whether an exclusion of women was actually shown. Since the record indicated that 220 women had indeed come forward to serve, the statute did not deny the female defendant her Fourteenth Amendment rights. The two concurring opinions rested solely on the fact that

the record indicated a good faith effort to have women perform jury duty.

It must be admitted that state law cannot totally exclude women from jury service. *White v. Crook,* 251 F. Supp. 401 (M.D. Ala., 1966). It is inconsistent, then, to argue that while women must be accorded the right to serve on juries, the State can hinder, burden, and erect barriers to the exercise of this right. This is analagous to arguing that citizens have a right to vote, but that they must pay a tax before exercising their right. See *Harmon v. Forssenius,* 380 U.S. 528, 85 S. Ct. 1177 (1965).

Hoyt also touched upon the State's interest in safeguarding a woman's responsibility as the center of home and family life. *Supra,* 368 U.S. at 62, 82 S. Ct. at 162, 163. Mover concedes that it can be argued that statutory discrimination based on sex does not violate the Equal Protection Clause if a rational basis exists for the differing treatment. *Muller v. Oregon,* 208 U.S. 412, 28 S. Ct. 324 (1908). But mover denies any reasonable connection between the affirmative action required of a woman who wishes to perform jury duty and the public health, safety, and welfare. Assuming, arguendo, that such a reasonable connection exists, the proper way to protect women's family responsibilities consistent with affording criminal defendants a representative jury is to automatically include women for jury duty, exempting them only upon their individual request.

The compelling concurring opinion of Justice Douglas in *Alexander v. Louisiana, supra,* scores Article 402 of the Code of Criminal Procedure as an unreasonable classification based on sex. He urges that Article 402

evidences an obsolete, anachronistic view of women's role in modern society which is at odds with reality. *Alexander v. Louisiana*, 92 S. Ct. at 1230, 1231.

Article 402 of the Louisiana Code of Criminal Procedure and Section 41 of Article VII of the Louisiana Constitution are unconstitutional on their face and violative of the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below is erroneous. For the reasons assigned, the present petition for Writ of Certiorari should be granted.

Respectfully submitted,

GRAVEL, ROY & BURNES
CAMILLE F. GRAVEL, JR.
JAMES MICHAEL SMALL
P. O. Box 1792
711 Washington Street
Alexandria, Louisiana

CAMILLE F. GRAVEL, JR.

CERTIFICATE

I certify that three copies of the foregoing Petition for Writ of Certiorari have been served by first class United States mail, properly addressed and postage prepaid to each of the following:

Attorney General William Guste,
State Capitol, Baton Rouge, Louisiana; and,

District Attorney Edwin O. Ware,
Rapides Parish Courthouse,
Alexandria, Louisiana,

this ____ day of November, 1974.

Alexandria, Louisiana.

ATTORNEY FOR MOVER

APPENDIX A

STATE OF LOUISIANA
Ninth Judicial District Court

IN THE NINTH JUDICIAL DISTRICT COURT IN AND FOR THE NINTH JUDICIAL DISTRICT, PARISH OF RAPIDES, STATE OF LOUISIANA, ON THE 14th DAY OF August, 1973

STATE OF LOUISIANA

versus No. 123,119

JOAN T. NORMAND

THE GRAND JURY OF THE PARISH OF RAPIDES, LOUISIANA, CHARGES THAT

JOAN T. NORMAND

COMMITTED THE OFFENSE OF 2nd degree murder IN THAT SHE ON OR ABOUT THE 17th DAY OF July, 1973 committed 2nd degree murder of Robert I. Jennings, CONTRARY TO THE LAW OF THE STATE OF LOUISIANA AND AGAINST THE PEACE AND DIGNITY OF THE SAME.

/s/ ALFRED B. SHAPIRO
Assistant District Attorney,
Ninth Judicial District

A TRUE BILL
Ray Stubblefield, Foreman

Filed this 14th day of August, 1973, M. Eubanks, Deputy Clerk of Court.

Certified Copy
Dated: Mar. 25, 1974
P.M. Dyer, Jr., Clerk of Court

APPENDIX B

CRIMINAL DOCKET NO. 123,119

STATE OF LOUISIANA	NINTH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF RAPIDES
JOAN T. NORMAND	STATE OF LOUISIANA

MOTION TO AMEND BILL OF INDICTMENT

NOW INTO COURT, through the undersigned Assistant District Attorney, comes the State of Louisiana and respectfully moves that the bill of indictment filed herein against the accused be amended as follows:

1.

The bill of indictment filed against the accused, Joan T. Normand, presently reads as follows:

> "The Grand Jury of the Parish of Rapides, Louisiana, charges that JOAN T. NORMAND committed the offense of 2nd degree murder in that she on or about the 17th day of July, 1973 committed 2nd degree murder of Robert I. Jennings,"

2.

The bill of indictment should be amended to read as follows:

"The Grand Jury of the Parish of Rapides, Louisiana, charges that JOAN T. NORMAND committed the offense of 2nd degree murder in that she on or about the 9th day of July, 1973 committed 2nd degree murder of Robert I. Jennings,"

in order that the bill of indictment correctly sets forth, the date of the commission of the offense.

WHEREFORE, MOVER, THE STATE OF LOUISIANA, PRAYS, that the bill of indictment against the accused, Joan T. Normand be amended as set forth hereinabove.

STATE OF LOUISIANA
/s/ ALFRED B. SHAPIRO
ALFRED B. SHAPIRO
Assistant District Attorney
P. O. Drawer 1472
Alexandria, Louisiana 71301

FILED Sept. 25, 1973

ORDER

Considering the foregoing motion and the law applicable thereto, it is

ORDERED that said motion be and it is hereby granted and the following language of the bill of indictment:

"The Grand Jury of the Parish of Rapides, Louisiana, charges that JOAN T. NORMAND committed the offense of 2nd degree murder in that she on or about the 17th day of July, 1973 committed 2nd degree murder of Robert I. Jennings,"

be amended to read as follows:

"The Grand Jury of the Parish of Rapides, Louisiana, charges that JOAN T. NORMAND committed the offense of 2nd degree murder in that she on or about the 9th day of July, 1973 committed 2nd degree murder of Robert I. Jennings,"

THUS DONE AND SIGNED at Alexandria, Louisiana, this 25th day of September, 1973.

/s/ JULES DAVIDSON, JR.
JUDGE

FILED Sept. 25, 1973

CERTIFICATE

I hereby certify that I have furnished a copy of the foregoing motion and order to defendant's counsel of record, Mr. J. Michael Small, P. O. Box 1792, Alexandria, Louisiana 71301, on this the 25th day of September, 1973.

/s/ ALFRED B. SHAPIRO
ALFRED B. SHAPIRO

APPENDIX C

HIS HONOR, JUDGE MARTIN L. LAIRD, III.
Wednesday, October 10, 1973

The accused present in open Court with counsel, Mr. James M. Small. This cause having come over from the preceding day, was called. Testimony and evidence adduced, testimony and evidence closed, case argued, and after Charge by the Court, the Jury retired for deliberation. The Jury then returned to open Court, and through it's Foreman, announced the following verdict: We the Jury, find the defendant, guilty as charged. Dated October 10, 1973, signed, John H. Marien, Foreman. The Jury was polled, the verdict being unanimous.

****

HIS HONOR, JUDGE MARTIN L. LAIRD, III.
Wednesday, October 24, 1973

The accused present in open Court with counsel, Mr. J. Michael Small. This cause having come on this day for sentencing, was called. Counsel representing the defendant filed a motion for a new Trial, matter argued and submitted. Court denied the motion. To which ruling of the Court counsel objected and reserved a bill of exception. Defendant personally and through counsel, waived delays for sentence. Court passed sentence as follows:- I sentence you, Joan T. Normand, to be committed to the custody of the Louisiana Department of Corrections, there to serve at hard labor for life, in such adult or penal correctional institution, as that Department might designate. Counsel representing the defendant filed a mo-

tion for the appeal and setting of return date for the filing and signing of Bills of Exceptions, Court ordered that the return date for the filing and signing of bills of exceptions and return date of the appeal be set for the 21st day of December, 1973. The accused gave her age as 42 years, was remanded, and the Sheriff ordered to see that said sentence is carried into effect.

****

APPENDIX D

STATE of Louisiana

versus

Joan T. NORMAND.

No. 54633.

Supreme Court of Louisiana.

July 1, 1974.

Rehearing Denied Aug. 30, 1974.

* * * *

MARCUS, Justice.

As a result of her shooting Robert Jennings five times at close range at the Westgate Shopping Center in Alexandria, Louisiana, Joan T. Normand was charged with second degree murder. R.S. 14:30.1. She was convicted after a trial by jury and sentenced to life imprisonment. Defendant appeals to this Court.[1]

BILL OF EXCEPTIONS NO. 1

A motion to quash challenged the legality of the grand

1 Eighteen bills of exceptions were reserved during the course of trial; however, Nos. 6, 8, 10 and 16 have been abandoned.

jury indictment and sought a declaration that Article VII, Section 41 of the Louisiana Constitution, as well as Article 402 of the Code of Criminal Procedure, are unconstitutional. The attack upon the grand jury composition, as well as the general venire and petit jury venire, is that they were improperly drawn, selected and constituted for the reason that members of the female sex were arbitrarily and capriciously excluded from service on these bodies. Defendant, a female, urges that she was denied a fair cross-section of the community to which she is entitled under the due process clauses of the Louisiana and the United States Constitutions. She also asserts that she has been denied her rights guaranteed by the equal protection clause of the Fourteenth Amendment of the United States Constitution.

This Court has consistently upheld our constitutional (Article VII, Section 41) and statutory (Article 402 C.Cr.P.) law exempting women from jury service as not violative of the due process and equal protection clauses. State v. Washington, 292 So.2d 234 (La.1974); State v. Leichman, 286 So.2d 649 (La.1973). Likewise, we rejected the same contention of a woman defendant indicted for murder in considering her motion to quash on the ground that women were excluded from jury service in State v. Stevenson, 292 So.2d 488 (La. 1974).

Bill of Exceptions No. 1 is without merit.

BILLS OF EXCEPTIONS NOS. 2 and 17

The denial of a request by defendant to sequester the jury during trial in accordance with Article 791 C.Cr.P. resulted in the reservation of Bill of Exceptions No. 2. Bill

of Exceptions No. 17 was taken when the court charged the jury that only nine of twelve jurors had to agree upon a verdict.

The issue presented by these related bills is whether the system of classification of crimes as announced in State v. Holmes, 263 La. 685, 269 So.2d 207 (1972) and State v. Flood, 263 La. 700, 269 So.2d 212 (1972) still applies to require that, after each juror is sworn, he shall be sequestered under Article 791 C.Cr.P. and that all twelve jurors must concur to render a verdict under Article 782 C.Cr.P.

Following this Court's decisions in Holmes and Flood, the Legislature of this State in 1973 amended former R.S. 14:30 to classify murder in two categories, first and second degree. The penalty for the crime of first degree murder is a mandatory death sentence under present R.S. 14:30. Thus, first degree murder is a "capital offense" as defined by the Code of Criminal Procedure. Second degree murder is defined and punished as set forth in R.S. 14:30.1. Since the penalty for second degree murder is life imprisonment, it is not a "capital offense." This Court so held in State v. Washington, 294 So.2d 793, handed down April 29, 1974.

Article 791 C.Cr.P. makes mandatory the sequestration of each juror after he is sworn only in capital cases; Article 782 C.Cr.P. requires a unanimous jury verdict from a twelve-man jury only in capital cases. Since second degree murder under R.S. 14:30.1 is not now classified as a capital offense, the trial court was correct in denying defendant's request to sequester the jury during the trial

and in its charge to the jury that only nine of twelve jurors had to agree upon a verdict.

Bills of Exceptions Nos. 2 and 17 are without merit.

BILLS OF EXCEPTIONS NOS. 3, 4 and 5

These bills were reserved during voir dire examination of prospective juror, Clyde Ray Greer. On each occasion that defendant sought to challenge this juror for cause, the court refused his challenge. Defendant contends that the trial judge committed reversible error in refusing to sustain a challenge for cause. Also, defendant exhausted all of his peremptory challenges before completion of the panel. Article 800 C.Cr.P.

The prospective juror Greer was interrogated by defense counsel and the judge. It is submitted by defendant that the responses of this juror show that he had an opinion that a person charged with a serious crime was guilty and he would require a "showing" to establish his innocence. Thus, defendant urges that the juror was impartial and subject to challenge for cause under Article 797(2) C.Cr.P.

Defendant admits that when Greer was questioned by the judge, he responded that he would render a fair and impartial verdict based upon the law and evidence. However, the implication is that answers given to the judge are not the usual answers which might be given in response to interrogation by counsel.

Defendant concedes that the cases in Louisiana on this issue make clear that each case turns on its own par-

ticular facts, and resolution of the ultimate question depends upon the court's interpretation of the prospective juror's testimony.

Article 797 C.Cr.P. provides in pertinent part:

> "The state or the defendant may challenge a juror for cause on the ground that:
>
> * * * *
>
> "(2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;"
>
> * * * *

Further, it is a well-established rule in our jurisprudence that a trial judge's exercise of sound discretion in ruling on qualifications of prospective jurors will be sustained unless unwisely exercised, provided he allows considerable latitude on voir dire examination. State v. Square, 257 La. 743, 244 So.2d 200 (1971) and State v. Rogers, 241 La. 841, 132 So.2d 819 (1961), cert. den. 370 U.S. 963, 82 S.Ct. 1589, 8 L.Ed.2d 830.

After a careful reading of the voir dire examination of this prospective juror, we find that he was a good juror who could render an impartial verdict according to the law and evidence. While the juror Greer honestly and can-

didly admitted that his first impression, like many people, was that a person charged with a serious crime was probably guilty, a fair interpretation of his entire testimony is that he could put aside this impression and render an impartial verdict based upon the law and evidence. He steadfastly repeated that he accepted the fact that a person is innocent until proven guilty, that he would require evidence to prove defendant's guilt beyond a reasonable doubt, and that he could be a fair and impartial juror. Thus, we conclude that the trial judge did not abuse his discretion in refusing to sustain defendant's challenge of this juror for cause. State v. Heard, 263 La. 484, 268 So.2d 628 (1972).

Bills of Exceptions Nos. 3, 4 and 5 are without merit.

BILL OF EXCEPTIONS NO. 7

This bill was reserved when defendant, after completion of voir dire examination of the prospective juror Samuel Johnson, requested and was denied an extra peremptory challenge. It is contended that, since the court erroneously denied the challenge for cause as to prospective juror Greer (Bills of Exceptions Nos. 3, 4 and 5), defendant had to use a peremptory challenge to remove Greer. Thus, defendant had no peremptory challenges left at the time she wished to exercise a peremptory challenge to the prospective juror Samuel Johnson. The same arguments are made in this bill as advanced in Bills Nos. 3, 4 and 5. The discussion under those bills amply answers the contentions advanced in this bill. In view of the conclusion that Bills Nos. 3, 4 and 5 are without merit, it follows that this bill is also without merit.

BILL OF EXCEPTIONS NO. 9

[6] This bill was reserved to the sustaining of the objection by the State to the question asked by counsel for the defendant of the State witness Booker Mitchell: "Allright, and did you tell me to come to your office and indicate that you would discuss it with me?"

The objection of the State is that the fact that Mitchell told counsel for defendant he would discuss the case with him at his office was not relevant to the case and had nothing to do with the guilt or innocence of the accused.

Counsel for the defendant stated (out of the presence of the jury) that he sought to establish by this questioning that this witness had indicated to counsel that if he came to the office of the witness and talked to him person to person, rather than on the telephone, that Mitchell would discuss the facts of the case. However, after counsel came to the office, defense counsel stated Mitchell "changed his mind once I got there, apparently at the behest of an assistant District Attorney and told me that on the contrary it was at the advice of his attorney." Defendant argues that he should have been allowed to show that Mitchell, an eye-witness to the shooting incident giving rise to the charge herein, was influenced by the assistant district attorney. This is an argument seeking to place the issue under the provisions of R.S. 15:492 which provides:

> "When the purpose is to show that in the special case on trial the witness is biased, has an interest, or has been corrupted, it is competent to question him as to any particular fact showing or tending to show such bias, interest or corruption,

> and unless he distinctly admits such fact, any other witness may be examined to establish the same."

The fact that this witness changed his mind about discussing the facts of the case with defense counsel after conversation with the assistant district attorney or upon advice of his attorney is of no moment. There is no contention of any "corruption" of the witness or that he had an "interest." At most, "bias" is alleged in that the witness was influenced by the assistant district attorney.

The State submits in brief that it is at a loss to understand how the question of whether or not the witness would discuss the case with counsel for the defendant has any bearing on his bias for or against the defendant. We agree. No error exists in the ruling of the trial judge. In any event, we are unable to see how defendant was prejudiced in any way by this ruling.

Bill of Exceptions No. 9 is without merit.

BILLS OF EXCEPTIONS NOS. 11 and 12

When the prosecution was allowed, over objection of defendant, to introduce into evidence and display to the jury two photographs depicting the deceased, Bills of Exceptions Nos. 11 and 12 were reserved.

Defendant submits that the photographs in this case had no probative value whatsoever and could only serve to unduly influence the jury. She states that her counsel, in opening statement, informed the jury that it would not

be disputed that she shot the decedent; nor would it be disputed that the shots fired by her resulted in his death. Furthermore, Dr. William Henry Thomas testified as to the number of gunshot wounds and the exact location of each. Hence, the photographs added nothing to the State's case.

On the other hand, the State urges that the photographs have considerable probative value as showing the position in which the victim was found in the car and also depicting the location of the bullet wounds. We agree. Further, an examination of the photographs shows them to be innocuous and without prejudicial effect.

Hence, we conclude that the probative value of the photographs introduced into evidence outweighs any possible prejudicial effect. State v. McCauley, 272 So.2d 335 (La.1973).

Bills of Exceptions Nos. 11 and 12 are without merit.

BILL OF EXCEPTIONS NO. 13

The defendant claims error in the ruling of the trial judge that certain inculpatory statements made by the defendant could be introduced into evidence without prior notification by the State of its intention to introduce these statements, as required by Article 768 of the Code of Criminal Procedure.

The State's brief correctly answers this contention of defendant. Article 768 C.Cr.P. prescribes no formal method of giving the notice required by this article for it

merely provides that the State must advise defendant in writing prior to the beginning of the opening statement. In its answer to the supplemental motion for a bill of particulars, the State sets forth in detail the oral communications, admissions or statements made by defendant. The dates and to whom these statements were made are recited. The State reserved its right to introduce at trial any statements which might come to its attention in the future, leaving the clear implication of its intention to introduce the statements set forth in its answer.

We find that the aforesaid constitutes substantial compliance by the State with Article 768 C.Cr.P.

Furthermore, this Court held in State v. Jackson, 260 La. 561, 256 So.2d 627 (1972) that, if notice is not given as required under Article 768, inadvertently and in good faith, the trial court may nevertheless admit the inculpatory statement under Article 769 of the Code of Criminal Procedure "if it finds that the defendant is not taken by surprise or prejudiced in the preparation of his defense." This pronouncement is appropriate here.

Bill of Exceptions No. 13 is without merit.

BILLS OF EXCEPTIONS NOS. 14 and 15

Bill of Exceptions No. 14 was reserved to the trial court's ruling allowing into evidence the statement made by defendant to the police officers at the scene that she had "shot the hell out of him" prior to being given the Miranda warnings. Bill of Exceptions No. 15 was reserved to the ruling of the court allowing into evidence

certain statements made by the defendant to Officer Cardwell while on her way to the police station and after she had been advised of her Miranda rights. It is urged that the latter statements were "tainted" because of the lack of the Miranda warnings initially.

According to the record, defendant shot Robert Jennings, her common-law husband, five times at close range with a .32 caliber pistol in the parking lot of the Westgate Shopping Center on MacArthur Drive in Alexandria, Louisiana. After this shooting, defendant crossed the street to the Exxon Station and there telephoned the police. Upon arrival at the scene of the shooting, Officer Melancon observed the victim in the car with blood running down his left arm. He then received a message over the air from the radio operator that a woman had reported the shooting from an Exxon Station across the street. No name or description of defendant was given to Officer Melancon. Officer Cardwell testified that, upon arrival at the scene of the crime, the victim informed him that his assailant had headed toward the Exxon Station. Officer Cardwell immediately transmitted this information to Officer Melancon who was in the police vehicle. Thereupon, Officer Melancon proceeded in the direction of the service station in his vehicle while Officer Cardwell proceeded in that direction on foot. Officer Melancon saw defendant as she was walking across the street headed back toward the scene of the shooting. As he approached her, he got out of his vehicle. Officer Cardwell arrived at this location at about the same time. Officer Melancon asked defendant if she knew anything about the shooting to which she replied: "Yes, I shot the hell out of him." She was thereafter placed under arrest by Officer Cardwell, and Officer Melancon gave her the Miranda warnings. It

should be pointed out that both officers testified that they received a call at 1:12 p. m. to proceed to the shopping center where there had been a shooting; Officer Melancon testified that he arrived at the scene of the shooting at 1:15 p. m., and defendant was read the Miranda warnings at 1:17 p. m. On the way back to the police station in the police vehicle, defendant was again administered the Miranda warnings by Officer Cardwell. It was at this time that defendant made further inculpatory statements.

Defendant contends that the statement at the scene of the shooting was improperly allowed in evidence since it violated the rule of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (Bill of Exceptions No. 14). Defendant further urges that the statements made to Officer Cardwell while on the way back to the police station and after having been advised of her Miranda rights were also incorrectly allowed in evidence since they were "tainted" because of the lack of Miranda warnings initially (Bill of Exceptions No. 15).

The State contends the statement at the scene, and those later made to the police officers in the car on the way to the station after the defendant was given the Miranda warnings, were admissible under the circumstances in this case and the holding of this Court in State v. Levy, 292 So.2d 220 (La.1974).

We find that our decision in State v. Levy is controlling here. In Levy, defendant had shot her common-law husband in a bar. She then went outside and sat in his car, parked nearby across the street. The investigating officer arrived about three minutes later. From bystander-

witnesses, he learned that the dying man's name was Willie Francois and that his wife, Elizabeth Francois, had shot him. The officer was also informed by the bystanders that she was sitting in her white Ford outside. As the officer walked across to a white car with a lady sitting in it, one of the bystanders yelled: "That's his wife sitting in the car." The officer then asked the lady her name, and she replied "Elizabeth Francois Levy. ' Having been informed that the victim's surname was Francois, the Levy portion of the name puzzled the officer. In order to clearly identify her as the suspect, the officer then asked her: "Is that your husband in there?" She replied: "Yes that's my husband and I shot the son of a bitch. I shot him, because he slapped me." She was then asked by the officer where the gun was, and she answered that it was in her purse. The officer asked for and was granted permission by her to retrieve it from the purse. She was then placed under arrest and given the Miranda warnings.

We stated in Levy:

> "*Miranda* prohibits the use of statements 'stemming from custodial interrogation of the defendant,' in the absence of the procedural safeguards required by this decision, such as informing the accused person of his right to remain silent. 384 U.S. 444, 86 S.Ct. 1612. Custodial interrogation means 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' Id. 'This is what we meant in *Escobedo* [cited below] when we spoke of an investigation which had focused on an accused.' Id., at Footnote 4.

"On the other hand, the court in *Miranda* specifically noted: 'Our decision is not intended to hamper the traditional function of police officers in investigating crime. . . . . General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. . . . In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.' 384 U.S. 477-478, 86 S.Ct. 1629-1630.

"Nevertheless, an earlier decision, Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), whose holdings were amplified by *Miranda*, had marked the area requiring constitutional safeguard as where 'the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect'. 378 U.S. 490, 84 S.Ct. 1765. See State v. Tarrance, 252 La. 396, 211 So.2d 304, 309 (1968). See also Orozco v. Texas, 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969)."

Viewed in this light, the question here, as the questions in Levy, were clearly of the same nature, i. e., purely of an investigatory nature. The Levy questions: "What is your name?" and "Is that your husband in there?" were considered by us simply to ascertain that this lady was indeed the suspect the officer sought to detain.

The present situation is somewhat analogous. However, here, the information in the police officers' possession as to the suspect was far less than in Levy. The

question here was not as direct insofar as the investigation was concerned as were the questions in Levy.

Under the circumstances here presented, the initial statement without the Miranda warnings was properly admitted in evidence. It was given without the compelling influence of custodial questioning, such as is expressly excluded by Miranda, and was a spontaneous nonresponsive utterance to the question asked by the police officer.

It follows that the other statements thereafter given, after the Miranda warnings, were not "tainted" and were properly admitted in evidence.

Bills of Exceptions Nos. 14 and 15 are without merit.

BILL OF EXCEPTIONS NO. 18

Defendant's motion for a new trial, urging that the bills reserved disclosed prejudicial error, was denied. Bill of Exceptions No. 18 was reserved.

This bill presents nothing for review, as we have discussed the errors urged in the bills heretofore considered and found them to be without merit.

For the reasons assigned, the conviction and sentence are affirmed.

CALOGERO, J., concurs.

BARHAM, J., dissents and assigns reasons.

TATE, J., is of the opinion that the defendant, a woman, is denied the equal protection of the laws by the effective exclusion of woman from the venires from which the grand and petit jurors were selected.

BARHAM, Justice (dissenting).

Again I must disagree with the majority's disposition of a female defendant's attack on the constitutionality of La.Const. Art. VII, § 41 and Code of Criminal Procedure Article 402. These provisions, in my opinion, violate a criminal defendant's state and federal constitutional rights to due process and a female criminal defendant's right to equal protection under the Fourteenth Amendment to the United States Constitution. See my dissents in State v. Stevenson, 292 So.2d 488 (La. 1974) and State v. Enloe, 276 So.2d 283 (La. 1973).

I further disagree with the majority's conclusion that those statements given in answer to defendant's supplemental bill of particulars concerning defendant's inculpatory statements constitute substantial compliance with Code of Criminal Procedure, Article 768. The majority clearly admits that the State's answer contained only a "* * * clear implication of its intention to introduce the statements * * *." Such implication *does not* amount to written notice.

In further discussion of defendant's bill of exceptions dealing with the admission into evidence of an inculpatory statement as to which no written notice of the State's intention to introduce was given, the majority notes our decision in State v. Jackson, 260 La. 561, 256 So.2d 627 (1972). In Jackson we stated:

> "* * * by reason of Article 769, if the state inadvertently and in good faith fails to notify [the defendant of its intention to use inculpatory statements] in advance of the trial, the trial court may nevertheless admit the inculpatory statement *'if it finds that the defendant is not taken by surprise or prejudiced in the preparation of his defense'*. * * * "
> (Emphasis supplied.)

While the testimony attached to the bill of exceptions clearly shows that the trial court found that defendant was aware of the *existence* of the inculpatory statements, nothing attached to the bill reveals a finding that the defendant was not taken by surprise or prejudiced by the failure of the State to give notice of its intention to introduce the inculpatory statements. Nor has there been a finding by the majority that defendant was not surprised or prejudiced by the State's failure to give the written notice required by C.Cr.P. Art. 468.

Since the majority has not made the findings required by the Jackson decision, I conclude that it would not hold this failure to strictly comply with C.Cr.P. Art. 468 to be reversible error under any circumstances. I could not acquiesce in such a holding.

For the aforestated reasons, I respectfully dissent.

---

* C.Cr.P. Art. 769 reads:
"Evidence not fairly within the scope of the opening statement of the state shall not be admitted in evidence.
"If the state offers evidence that was inadvertently and in good faith omitted from the opening statement, the court, in its discretion may admit the evidence if it finds that the defendant is not taken by surprise or prejudiced in the preparation of his defense."

APPENDIX E

UNITED STATES OF AMERICA
STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

New Orleans, 70112

New Orleans, Friday, August 30, 1974

Court was duly opened pursuant to adjournment. Present Their Honors: Joe W. Sanders, Chief Justice, Frank W. Summers, Mack Barham, Albert Tate, Jr., John A. Dixon, Jr., Pascal F. Calogero, Jr. and Walter F. Marcus, Jr., Associate Justices:

Rehearing Refused:

No. 54,633 - State v. Normand
BARHAM, J., is of the opinion that a rehearing should be granted.

I, Andrew J. Falcon, Deputy Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this Court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 26th day of November, A.D. 1974.

/s/ ANDREW J. FALCON
Deputy Clerk,
Supreme Court of Louisiana

APPENDIX F

Criminal Docket Number 123,119

NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES
STATE OF LOUISIANA

STATE OF LOUISIANA

versus

JOAN T. NORMAND

FILED: Sept. 27, 1973

MOTION TO QUASH GRAND JURY INDICTMENT AND TO DECLARE UNCONSTITUTIONAL ARTICLE VII, SECTION 41 OF THE LOUISIANA CONSTITUTION, AND ARTICLE 402 OF THE LOUISIANA CODE OF CRIMINAL PROCEDURE

TO THE HONORABLE, THE NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA:

NOW INTO COURT, through undersigned counsel, comes JOAN NORMAND, defendant herein, who respectfully represents that:

1.

Defendant is charged herein by Grand Jury Indictment with the offense of Second Degree Murder. The Grand Jury Indictment is number 123,119 on the criminal docket of the Ninth Judicial District Court and is incorporated herein by reference.

2.

Defendant is a white female, 42 years of age, and at the time of the finding of this Indictment was a citizen and resident of Rapides Parish, Louisiana, and of the United States of America.

3.

As a citizen of Louisiana and of the United States, she claims, invokes, and asserts her rights, privileges, and immunities guaranteed to her under (a) the laws, statutes, and jurisprudence of Louisiana and of the United States; and, (b) the provisions of the United States and Louisiana Constitutions; and particularly, she claims, invokes and asserts the rights, privileges, and immunities guaranteed to her under the provisions of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States as well as Sections 2, 6 and 9 of Article I of the Louisiana Constitution.

4.

The Grand Jury Indictment herein, as well as the Rapides Parish General Venire list from which the Grand Jury was drawn which indicted defendant and the Petit Jury

list should be quashed pursuant to the provisions of the Constitution asserted in the articles hereinabove and the provisions of the Louisiana Code of Criminal Procedure, Article 535 B (2) and Louisiana Code of Criminal Procedure Article 535 B (3) for the reason that the General Venire and Petit Jury Venire were improperly drawn, selected and constituted and the manner of selection of the General Venire, the Grand Jury Venire, and the Grand Jury which indicted defendant was illegal.

5.

Particularly, among other reasons, the General Venire and the Petit Jury Venire were improperly drawn, selected and constituted and the manner of selection of the General Venire, the Grand Jury Venire and the Grand Jury was illegal for the reason that members of the female sex were arbitrarily and capriciously excluded from service on the Grand Jury, the General Venire and Petit Jury Venire, thereby denying this female defendant a fair cross-section of the community to which she is entitled under the due process clause of the Louisiana and United States Constitutions. Additionally, defendant, as a member of the female sex, has been denied her privileges, immunities and protections under the equal protection clause of the Fourteenth Amendment to the United States Constitution.

6.

Defendant specifically pleads the unconstitutionality of Louisiana Constitution Article VII, Section 41, which provides in pertinent part:

> ". . . however, that no woman shall be drawn for jury service unless she shall have previously filed with the Clerk of the District Court a written declaration of her desire to be subject to such service . . ."

Defendant also specifically pleads the unconstitutionality of Article 402 of the Louisiana Code of Criminal Procedure which provides:

> "A woman shall not be selected for jury service unless she has previously filed with the Clerk of Court of the Parish in which she resides a written declaration of her desire to be subject to jury service."

In the further alternative, in the event the Court shall not hold Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402 unconstitutional on their face, then she pleads the unconstitutionality of Louisiana Constitutional Article VII, Section 41, and Louisiana Code of Criminal Procedure Article 402 in their application by the Rapides Parish Jury Commission and in their application to her cases and other cases of a like nature in Rapides Parish. Defendant shows that the Rapides Parish Jury Commission has not discharged its duty with respect to efforts to obtain qualified women to serve on the Grand and Petit Juries of Rapides Parish when in fact there are large numbers of members of the female sex qualified and available to serve.

WHEREFORE, defendant, JOAN NORMAND, prays that this Motion to Quash be maintained.

GRAVEL, ROY & BURNES
611 Murray Street
P. O. Box 1792
Alexandria, Louisiana 71301

/s/ J. MICHAEL SMALL
Attorney for Defendant

* * *

CERTIFICATE

I certify that a copy of the foregoing Motion to Quash has been mailed to Mr. Edwin O. Ware, District Attorney, Rapides Parish Courthouse, Alexandria, Louisiana, this 27th day of September, 1973.

Alexandria, Louisiana.

/s/ J. MICHAEL SMALL
OF COUNSEL

Criminal Docket Number 123,119

NINTH JUDICIAL DISTRICT COURT IN AND FOR
THE PARISH OF RAPIDES
STATE OF LOUISIANA

STATE OF LOUISIANA

versus

JOAN T. NORMAND

FILED: Sept. 27, 1973

ORDER

PREMISES CONSIDERED:

LET the above and foregoing Motion to Quash be and the same is hereby fixed for hearing on the 1st day of October, 1973.

Alexandria, Louisiana, this 27th day of September, 1973.

/s/ J. MARTIN LAIRD, III
JUDGE
Ninth Judicial District Court

APPENDIX G

CRIMINAL DOCKET NUMBER 123,119

NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES

STATE OF LOUISIANA

STATE OF LOUISIANA

versus

JOAN T. NORMAND

FILED: October 23, 1973

STIPULATION REGARDING RAPIDES PARISH GENERAL VENIRE, PETIT JURY VENIRE, GRAND JURY VENIRE AND GRAND JURY

It is stipulated by and between Edwin O. Ware, District Attorney for the Parish of Rapides, State of Louisiana, and J. Michael Small, attorney for the defendant, Joan T. Normand, that the records of the Rapides Parish Jury Commission reflect the following information:

1.

The Rapides Parish General Venire List from which the Grand Jury Venire, Grand Jury, Petit Jury Venire and Petit Jury were drawn and selected in the captioned case, included the names of five (5) women and 495 men.

2.

Neither the Grand Jury Venire from which the Grand Jury that indicted the defendant was drawn, nor the Grand Jury that indicted the defendant, included any women.

3.

The Petit Jury Venire from which the Petit Jury was selected that tried and convicted defendant, included two (2) women.

4.

The Petit Jury, (composed of twelve jurors and one alternate juror) that tried and convicted the defendant did not include any women. The only female prospective juror called and examined during voir dire examination was challenged peremptorily by the State.

5.

It is further stipulated that the 1970 U.S. Census Report for the Parish of Rapides reflects the following information: The total number of males in Rapides Parish 15 years of age and older in 1970 was 38,140. The total number of females age 15 years and older in Rapides Parish in 1970 was 42,995.

6.

It is further stipulated that the disproportionate number of women appearing on the Rapides Parish General

Venire and Petit Jury Venire and the complete absence of women from the Grand Jury Venire, Grand Jury, and Petit Jury in the captioned case resulted from the adherence by the Rapides Parish Jury Commission to Article 7, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure.

7.

This stipulation is submitted in connection with the Motion to Quash Grand Jury Indictment and to declare unconstitutional Article 7, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure which was previously filed by defendant.

GRAVEL, ROY & BURNES

/s/ J. MICHAEL SMALL
J. MICHAEL SMALL, OF COUNSEL
for defendant, Joan T. Normand
P. O. Box 1792
Alexandria, Louisiana 71301

/s/ EDWIN O. WARE
EDWIN O. WARE,
DISTRICT ATTORNEY
Parish of Rapides
Alexandria, Louisiana 71301

APPENDIX H

E-X-T-R-A-C-T

HIS HONOR, JUDGE MARTIN L. LAIRD, III.
Monday, October 1, 1973

The accused present in open Court with counsel, Mr. James M. Small. This cause having come on this day for hearing on Motion to Quash Grand Jury Indictment and to declare unconstitutional Article VII, Section 41 of the Louisiana Constitution, and Article 402 of the Louisiana Code of Criminal Procedure, was called. Motion taken up, argued and submitted. Motion denied. To which ruling of the Court, counsel for the defendant objected, reserved a bill of exception, attaching to and making a part of the bill, the motion to quash the Grand Jury Indictment, the Indictment itself, and argument of counsel. Counsel for the defense filed Supplemental motion for bill of particulars. Counsel for the defense had no objection to State's answer to the original motion for bill of particulars, and was ruled sufficient by the Court. Counsel for the State will file answer to supplemental motion for bills of particulars this week.

APPENDIX I

Criminal Docket Number 123,119

NINTH JUDICIAL DISTRICT COURT IN AND FOR
THE PARISH OF RAPIDES
DIVISION D
STATE OF LOUISIANA

STATE OF LOUISIANA

versus

JOAN T. NORMAND

FILED: February 20, 1974

BILL OF EXCEPTIONS NO. 1

BE IT REMEMBERED that on October 1, 1973, prior to the trial of this case, the defendant, through her counsel, filed a Motion to Quash Grand Jury Indictment and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure, which motion was denied by the Court and to which ruling the defendant, through her counsel, objected and reserved a Bill of Exception. Attached to and made a part of the Bill of Exception was the Motion to Quash Grand Jury Indictment and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of

Criminal Procedure, the Grand Jury Indictment, and the argument on the motion, which attachments are annexed to this Bill of Exception. Additionally, a Stipulation regarding the Rapides Parish General Venire, Petit Jury Venire, Grand Jury Venire, and Grand Jury entered into between counsel for defendant and Edwin O. Ware, District Attorney for the Parish of Rapides, is attached to this Bill of Exception.

And defendant does now reserve a Bill of Exception making part thereof the motion to quash grand jury indictment and to declare unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure, the Indictment and amended Indictment and the transcript of the hearing on the motion, and the Stipulation regarding Rapides Parish General Venire, Petit Jury Venire, Grand Jury Venire, and Grand Jury.

And now, defendant, through her counsel, having submitted this Bill of Exception to the District Attorney, now tenders the same to the Court and prays that it be allowed and signed by the Judge of this Court, as provided by law.

/s/ J. MICHAEL SMALL
OF COUNSEL
FOR DEFENDANT

Allowed and signed this 19th day of February, 1974.

/s/ MARTIN L. LAIRD, III
JUDGE - Ninth Judicial
District Court

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
DEC 30 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-675

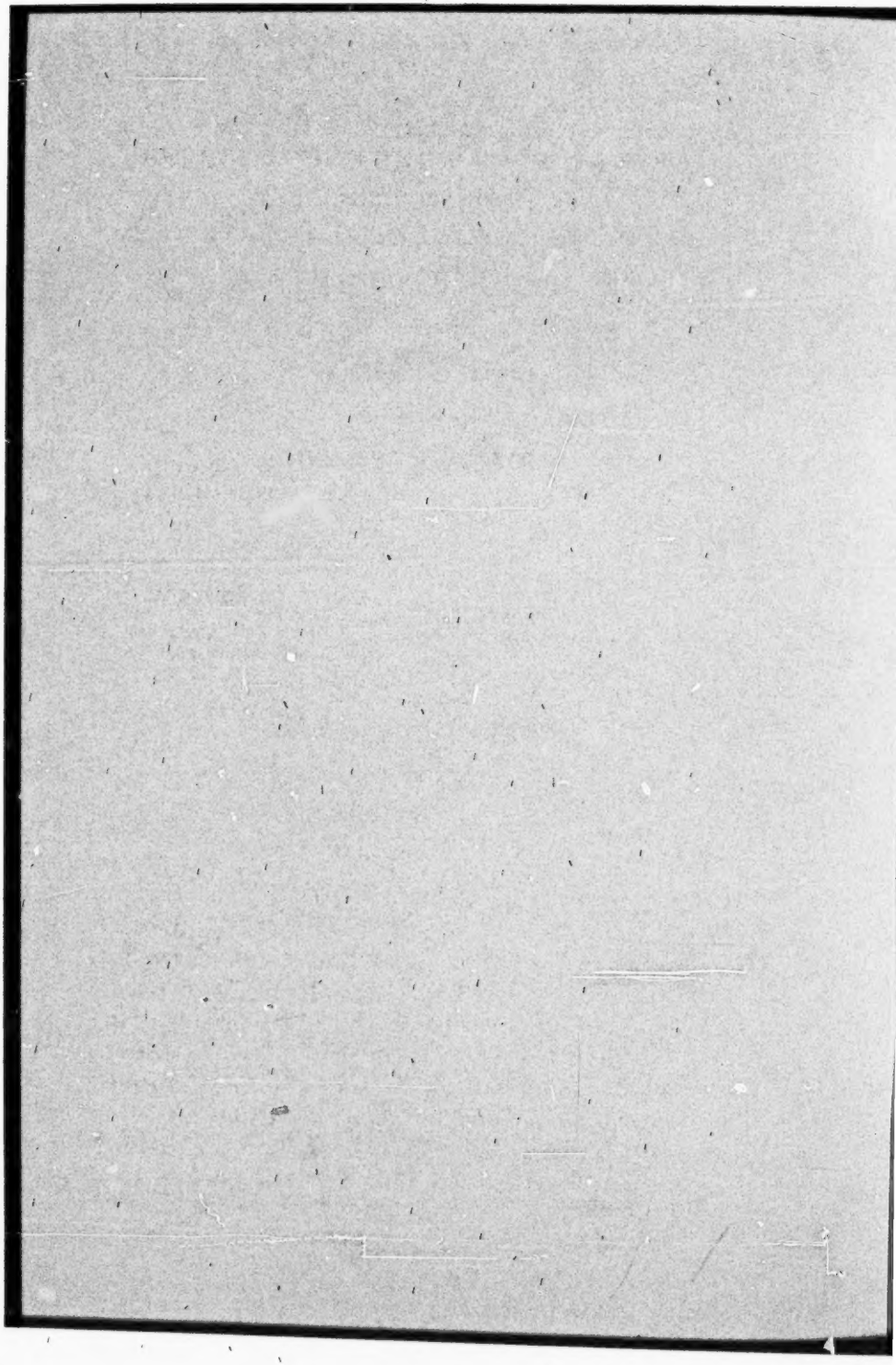
JOAN T. NORMAND,
Defendant-Petitioner,

versus

STATE OF LOUISIANA,
Plaintiff-Respondent.

BRIEF OF RESPONDENT

WILLIAM J. GUSTE, JR.
Attorney General
EDWIN O. WARE, III
District Attorney
ALFRED B. SHAPIRO
Assistant District Attorney
P. O. Drawer 1472
Alexandria, Louisiana 71301
ATTORNEYS FOR
PLAINTIFF-RESPONDENT



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No. 74-675

JOAN T. NORMAND,
Defendant-Petitioner,

versus

STATE OF LOUISIANA,
Plaintiff-Respondent.

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

Early on the afternoon of July 9, 1973, Joan T. Normand fired five (5) shots into the person of her common-law husband, Robert I. Jennings, with a pistol, thereby causing his death. Petitioner was subsequently indicted by the Rapides Parish Grand Jury for the offense of Second Degree Murder. On October 10, 1973, a twelve man jury unanimously found her guilty of that charge. The petitioner then appealed her conviction to the Louisiana Supreme Court and on July 1, 1974, that Court affirmed her conviction and thereafter denied her application for rehearing on August 30, 1974. Throughout the proceedings, the petitioner insisted that Article 7, Section 41 of

the Louisiana Constitution of 1921 and Article 402 of the Louisiana Code of Criminal Procedure were unconstitutional and deprived her of her right to due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States. These provisions of state law provide, of course, for the exemption of persons of the female sex from jury service unless they previously file with the Clerk of Court a written declaration of desire to be subject to jury service. These provisions are set forth in full in the petition filed herein.

The identical questions have been presented to this Court in the cases of *Healy v. Edwards*, No. 73-759 on the docket of this Court and *Taylor v. Louisiana*, No. 73-5744 on the docket of this Court. It is respectfully submitted that since these cases involve the identical issue in question in this matter, that the Court should forego action on this petition until the decisions are rendered in the *Healy* and *Taylor* cases. Action on this petition would only result in a duplication of the efforts in those cases. Because the identical issue is presented in *Healy v. Edwards* and *Taylor v. Louisiana, supra*, this brief will be limited to a short discussion of the issues presented by the petition. This issue surely has been thoroughly briefed and discussed in oral argument in *Healy* and *Taylor*. Though it will not be discussed in this brief, the respondent would like to specifically call the Court's attention to the argument presented in the supplemental brief of the appellants in *Healy v. Edwards*, No. 73-759, discussing the issue of mootness, which has been argued before the Court.

ARGUMENT

In 1961, in *Hoyt v. Florida*, 368 U.S. 57, 82 S.Ct. 159, this Court decided a challenge to the constitutionality of a Florida statute which contained the exact same provisions as the Louisiana Constitution and Code of Criminal Procedure presently contain. Petitioner asserts that the *Hoyt* case turned on a narrow issue and attempts to distinguish it on this basis. An examination of *Hoyt* will reveal that this view is clearly erroneous. In *Hoyt*, the Court framed the issue as follows:

> "Where, as here, an exemption of a class in the community is asserted to be in substance an exclusionary device, the relevant inquiry is whether the exemption itself is based on some reasonable classification and whether the manner in which it is exercisable rests on some rational foundation." 368 U.S. at 61.

The broad holding of the Court was:

> "In neither respect can we conclude that Florida's statute is not 'based on some reasonable classification' and that it is thus infected with unconstitutionality." 368 U.S. at 61.

> "But we cannot regard it as irrational for a state legislature to consider preferable a broad exemption, whether born of the state's historic public policy or of a determination that it would not be administratively feasible to decide in each individual instance whether the family respon-

> sibilities of a prospective female juror were serious enough to warrant an exemption. . . .
>
> Likewise, we cannot say that Florida could not reasonably conclude that full effectuation of this exemption made it desirable to relieve women of the necessity of affirmatively claiming it, while at the same time requiring of men an assertion of the exemptions available to them." 368 U.S. at 63, 64.

The Court dismissed the appellant's argument with reference to the fact that only two hundred twenty (220) women out of approximately forty-six thousand (46,000) registered female voters in the county had volunteered for jury duty, citing *Hernandez v. Texas*, 347 U.S. 475, 74 S.Ct. 667. The Court indicated that circumstances or chance could well have prevented individuals who were members of that class (women) from serving on particular juries or during a particular period of time. The Court squarely held that the statute as written was not offensive to the Fourteenth Amendment.

In *Hoyt*, there was also an attack on the statute as applied to this particular defendant. This involved the action of the jury commissioners in attempting to avoid listing women for jury service who though they might be registered for service, might be disqualified for other reasons. There is nothing in the record in the instant matter to demonstrate that the action of any such officials contributed to the disproportionate number of men on the jury panel. In fact, the stipulation between the State of Louisiana and the defendant, beginning on Page 32A, Appendix G of the petition, states in paragraph 6:

> "It is further stipulated that the disproportionate number of women appearing on the Rapides Parish General Venire and Petit Jury Venire and the complete absence of women from the Grand Jury Venire, Grand Jury, and Petit Jury in the captioned case resulted from the adherence by the Rapides Parish Jury Commission to Article 7, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure."

Therefore, the defendant-petitioner has stipulated to the fact that the disproportion results from the operation of the statutes and not from the action of any administrative officials.

The Court, at 368 U.S. 60, passed up the opportunity to rule on the present validity of the ancient dictum in *Strauder v. West Virginia,* 100 U.S. 303, 25 L.Ed. 664, 1880, that a state may constitutionally preclude women from jury service altogether and include only males as members of the jury.

Hoyt did not turn on a narrow issue. The opinion considered a broad range of attack on a statute identical to the one in question in this case and found it within the limitations of the Fourteenth Amendment.

In *Healy v. Edwards,* 363 F.Sup. 1110, U.S. District Court, Eastern District of Louisiana, 1973, Judge Rubin reasoned that on the basis of *Reed v. Reed,* 404 U.S. 171, 92 S.Ct. 251 (1971), and *Frontiero v. Richardson,* 411 U.S. 677, 93 S.Ct. 1764 (1973), that *Hoyt v. Florida, supra,* was

no longer valid authority. At page 1117 of the opinion, he stated:

> "When today's vibrant principle is obviously in conflict with yesterday's sterile precedent, trial courts need not follow the outgrown dogma."

Reed and *Frontiero* both deal with factual situations in which a class of persons, that is, females, is accorded different treatment on the basis of criteria which was completely unrelated to the objectives of the statutes in question in those particular cases; that is, the use of the sexual classification was arbitrary and unwarranted. In *Reed,* an Idaho statute granting preference to individuals as administrators of estates was struck down and in *Frontiero,* the right of a member of the uniform services to claim their spouses as dependents for the purpose of obtaining additional military benefits was involved. The ruling in both of those cases was that there was not a reasonable classification under the Fourteenth Amendment. The ruling in *Hoyt,* by the Supreme Court of the United States, was that there was a reasonable classification involved. In fact, the principles enunciated in *Reed v. Reed* and *Frontiero v. Richardson* are nothing more than the same principles which have been enunciated by this Court for many years under the equal protection clause of the Fourteenth Amendment of the United States Constitution. It is questionable whether *Reed v. Reed, supra,* and *Frontiero v. Richardson, supra,* present a "vibrant principle" which undermine the ruling of the "sterile precedent" in *Hoyt v. Florida, supra.*

Judge Rubin proceeds to discuss the objectives of the legislation with reference to these sexual classifications and states, 363 F.Sup. at 1114:

> "The objective of the state legislation here attacked is the method of selecting juries. The state does not contend that there is any difference between males and females with respect to their qualifications or competency as jurors."

It is submitted that the Court mistakes the objectives of the legislation. The objectives of the legislation are clearly narrower than stated. The statute does not define jury qualifications, nor the compentency of persons to sit as jurors. The objectives of the legislation and the rationale therefor are thoroughly discussed in the case of *Hoyt v. Florida* and will not be repeated here. We would, however, incorporate that argument by reference here and represent to the Court that it more than adequately answers the questions raised by Judge Rubin in his opinion. Judge Rubin then further goes on to discuss the cases involving racial classifications and jury service which were specifically distinguished by the Court in *Hoyt v. Florida, supra.*

The case of *Thiel v. Southern Pacific Company*, 328 U.S. 217, 66 S.Ct. 984 (1946), a decision prior to the decision in *Hoyt v. Florida, supra*, involved a situation where the Clerk of Court and the jury commissioners excluded completely, wage-earners from all jury panels selected in that particular district. The holding is limited to the facts of the case because an administrative practice of the local court was involved and no legal provision was questioned.

Petitioner also cites *Ballard v. United States*, 329 U.S. 187, 67 S.Ct. 261 (1946), also decided prior to *Hoyt v. Florida, supra*, in which women were not included in the panels of grand and petit jurors in the southern district of California where Ballard's indictment was returned and where his trial was conducted. At that time, Congress had provided, in 28 U.S.C. 411, that Federal court jurors were to have the same qualifications as those required by the highest court of the state in which the United States District Court was situated and at that time, women were eligible in California for jury service according to the provisions of the California Code of Criminal Procedure Article 198. The administrative action in *Ballard* clearly violated the California statutory law which was made the law of the United States by act of Congress. No constitutional issue was presented in the *Ballard* case, nor was any decided.

It is interesting to note that in a footnote in *Hoyt v. Florida*, 368 U.S. at 60, the Court discussed the rationale of the Civil Rights Act of 1957 in which Congress adopted its own qualifications for Federal jury service independent of state law altogether. The Court noted there:

> "There is no indication that such congressional action was entailed by constitutional considerations."

CONCLUSION

It is clear that there is no legal authority, at the present time, for granting the relief sought, either in this case, in *Healy v. Edwards, supra*, or in *Taylor v. Louisiana, supra*. In order to grant the relief sought in any of these

three cases, this Court must directly and squarely overturn the decision of this Court in *Hoyt v. Florida, supra,* and invalidate provisions of state law which it found to be constitutionally permissible in the year 1961. Only thirteen (13) short years ago, this Court stated, 368 U.S. at 61:

> "Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a state, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she, herself, determines that such service is consistent with her own special responsibilities."

Can it now be said that the passage of such a brief period of time has made this consideration decadent?

Respectfully submitted,

STATE OF LOUISIANA

EDWIN O. WARE
District Attorney
P. O. Drawer 1472
Alexandria, Louisiana 71301

CERTIFICATE

I hereby certify that I have mailed a copy of the above and foregoing brief to the law firm of Gravel, Roy & Burnes, P. O. Box 1792, Alexandria, Louisiana, 71301, by placing a copy of same in the United States Mail, postage prepaid, on this the ____ day of December, 1974.

EDWIN O. WARE